

FILED

May 04, 2009

Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Summit Accommodators, Inc., dba Summit 1031
Exchange,
Debtor.

Case No. 08-37031-rld11

Kevin D. Padrick, Chapter 11 Trustee,
Plaintiff,

Adv. Proc. No. 09-3086-rld

v.

Mark A. Neuman; Brian Stevens; Lane D. Lyons;
and Timothy Larkin,

**ORDER ON TRUSTEE'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT
REGARDING NINTH CLAIM
FOR RELIEF FOR
TURNOVER PURSUANT TO
11 U.S.C. § 542**

Defendants.

This matter came before the Court on the Motion for Partial Summary Judgment ("the Motion") filed on behalf of Kevin D. Padrick, the Chapter 11 Trustee in this bankruptcy proceeding and the plaintiff in the above-referenced adversary proceeding ("the Trustee"). The Motion seeks summary judgment in favor of the Trustee on three claims for

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relief in his First Amended Complaint, as follows: (1) on his Seventh Claim for Relief (Implied-in-Law Contract) for damages in the amount of \$13.7 million; (2) on his Eighth Claim for Relief (Constructive Trust and Accounting); and (3) on his Ninth Claim for Relief (Turnover Pursuant to 11 U.S.C. § 542). The Defendants Mark A. Neuman, Brian Stevens, Timothy Larkin and Lane D. Lyons ("the Shareholders"), by and through their counsel, do not object to the Motion to the extent it seeks summary judgment on the Ninth Claim for Relief on the terms set forth in this Order, which terms are further agreed to by the Trustee.

The Court, having been fully advised, therefore enters an Order as follows:

1. Granting summary judgment in favor of the Trustee on his Ninth Claim for Relief for turnover pursuant to 11 U.S.C. § 542. All of the assets and property held by or in the name of the Shareholders, except for the Excluded Assets listed on the attached Exhibits 1, 2, 3 and 4 ("Subject Assets"), are hereby deemed property of Summit Accommodators, Inc. Pursuant to this Order, the Shareholders' interests in the Subject Assets are hereby turned over to the Trustee. The Subject Assets include, but are not limited to, any interest that the Shareholders have in the property and/or assets listed on the attached Exhibit 5. Consistent with this Order, the Subject Assets are deemed property of the estate pursuant to 11 U.S.C. §§ 363, 541, and 542, and the Trustee shall have the power to use, sell, lease, dispose of and otherwise exercise all rights of ownership in the Subject Assets to the fullest extent allowed by law. To the extent that there are pending or have been any sales or transfers of the Subject Assets, the proceeds from such sales or transfers are also property of the estate. This Order does not cause the turnover of any interests held by parties other than the Shareholders.

2. This Order shall have no collateral estoppel or other preclusive effect on any issues which may be or need to be adjudicated in this Adversary Proceeding or any other proceeding.

3. The Shareholders will be entitled to a credit for the value of the Subject Assets turned over against any judgment that may be subsequently awarded in this Adversary Proceeding. The calculation of the value of any such credit(s), how the value is to be allocated among the Shareholders, and all related issues are hereby deferred.

4. This Order is without prejudice to the Trustee's right to pursue any or all of the Excluded Assets in connection with any of his other Claims for Relief in this Adversary Proceeding or to satisfy any judgment he may obtain against the Shareholders. This Order further does not limit or alter in any way the Trustee's right to pursue any and all claims against any parties, including the Shareholders, other than on the Trustee's Ninth Claim for Relief. This Order fully resolves the Trustee's Ninth Claim for Relief. This Order also does not waive any of the Shareholders' defenses in this Adversary Proceeding with respect to any claims other than the Ninth Claim for Relief. All such defenses are preserved.

5. This Order does not resolve the Trustee's Motion for Partial Summary Judgment to the extent it seeks summary judgment on the Trustee's Seventh and Eighth Claims for Relief.

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Presented by:

TONKON TORP LLP

By /s/ David S. Aman

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Attorneys for Chapter 11 Trustee

cc: List of Interested Parties

EXHIBIT 1

**ASSETS OF LANE D. LYONS EXCLUDED FROM
PARTIAL SUMMARY JUDGMENT ORDER**

1. Personal residence located at 19570 Buck Canyon Rd., Bend, Oregon 97702, owned jointly with spouse as tenants by the entirety.
2. Household furnishings and personality in the residence and detached garage.
3. Personal checking and savings accounts held with wife: \$32,000 total.
4. Cash or cash equivalents on hand: \$12,000 total.
5. Retainers held by attorneys: \$13,000.
6. Automobile: 2006 Dodge Pickup, 2000 Chevrolet Suburban.
7. Other personality: Boat, Motorcycle, ATV, Snowmobiles (2), Cargo Trailer, Pickup Camper.
8. Business checking account for Lyons and Co., PC, and any interest in Lyons and Co., PC, an Oregon professional corporation, or its personality—office equipment, computers.
9. Units of ownership in MFG Operations, LLC, the operating entity of the Blacksmith Restaurant in Bend, Oregon.
10. Term Life Insurance policies (no cash value) on Lyons and wife, with Northwest Mutual.
11. §529 college savings account for Lyons' children: approximately \$3,000.
12. All income derived from future personal services.
13. In addition to the above, all assets entitled to exemption under any applicable state or federal law.

EXHIBIT 2

**ASSETS OF TIMOTHY LARKIN EXCLUDED FROM
PARTIAL SUMMARY JUDGMENT ORDER**

1. Homestead located at 4700 W Antler Avenue, Redmond, Oregon.
2. Household goods and furnishings.
3. 2005 Toyota Tundra double cab pickup truck.
4. 1973 Triumph TR-6.
5. 1971 Triumph TR-6.
6. Two Polaris 4-wheel off-road vehicles.
7. Attorney trust accounts: Janet Hoffman: \$20,000 (with a \$5,500 invoice due for December and unknown amounts due for January and February); Paul R. Bocci, Jr.: approx. \$23,000 (net of unbilled time); Greene & Markley: \$5,000 (for defense of the Tenant litigation).
8. Cash: \$9,750.
9. Bank of the Cascades account: \$49,862.06.
10. Liberty Bank money market account: \$29,142.17.
11. Liberty Bank household checking: \$470.01.
12. 401(k) retirement account of approximately \$20,000.
13. All income derived from future personal services.
14. In addition to the above, all assets entitled to exemption under any applicable state or federal law.

EXHIBIT 3

**ASSETS OF MARK NEUMAN EXCLUDED FROM
PARTIAL SUMMARY JUDGMENT ORDER**

1. Household furnishings and personal possessions in the residence and garage (jointly owned).
2. Personal checking accounts held jointly with spouse. (Neuman's share-less than \$6,000).
3. Cash or cash equivalents on hand. Total: \$3,800.
4. TD Ameritrade Account (jointly owned): Balance \$14,500. Mark's share of value: \$7,250.
5. Autos (jointly owned): 2003 Jeep Liberty, 2001 Toyota 4Runner, 2004 Jeep Grand Cherokee, 2003 GMC Denali, 1973 Triumph TR6, 1971 Triumph TR6.
6. Roth IRA (solely owned): Gross FMV \$188,000.
7. Motor home (jointly owned).
8. Chris Craft (50% owned).
9. Term life insurance policies (no cash value) with AICPA Insurance Trust.
10. Accounting Practice (assets and income).
11. Professional Retainers (civil and criminal lawyers) (current balances- approx \$66,000).
12. All income derived from future personal services.
13. Personal residence located at 2922 NW Moore Court, Bend, Oregon (based on Neuman's agreement to move out of his residence at 18775 Macalpine Loop, Bend, OR 97702, within 45 days of the date this Order is entered).
14. In addition to the above, all assets entitled to exemption under any applicable state or federal law.

EXHIBIT 4

**ASSETS OF BRIAN STEVENS EXCLUDED FROM
PARTIAL SUMMARY JUDGMENT ORDER**

1. Savings account – Navy Federal Credit Union: \$300.
2. Columbia River Bank stock: \$1,000.
3. Retainers with attorneys: \$35,000.
4. CSV of life insurance: \$4,000.
5. HSA Bank medical reimbursement: \$500.
6. CPA and consulting businesses.
7. IRAs (FiServ and Fidelity): \$189,600.
8. Principal residence at 197 NW Outlook, Bend, Oregon.
9. Vehicles: 2004 Pacifica, 2005 Pacifica, 2001 Yukon, 2002 Class C motorhome, 2001 Ford Taurus.
10. Checking account (Bank of Cascades): \$3,000.
11. Schwab account: \$3,500.
12. Household furnishings, clothing and computers.
13. Grand piano.
14. All income derived from future personal services.
15. Monthly income (not to exceed \$150 per month) from Bradford Drilling Associates XX, LP.
16. In addition to the above, all assets entitled to exemption under any applicable state or federal law.

EXHIBIT 5

**NON-EXHAUSTIVE LIST OF ASSETS DEEMED
PROPERTY OF SUMMIT ACCOMMODATORS, INC.**

Interests in the following entities:

VSN Properties, LLC
Ashley Ranch, LLC
Blue Sky Buildings, LLC
Century Drive Mobile Home Park, LLC
Century Exchange, Inc.
CFalls Investments, LLC
Corney Investments, LLC
Culver Crossing, LLC
Doctors Court II, LLC
Emmett Ranch, LLC
Fraser Enterprises, LLC
Galveston Point, LLC
Gannon Point, LLC
Hope Ranch Properties, LLC
Hunter Ranch, LLC
Inland Capital Corp.
John Day River Development, LLC
Jordan Capital, LLC
Jordan River Development, LLC
KEB Antler Investments, LLC
Klondike Point, LLC

Lindy Point Properties, LLC
Main Street Quarter, LLC
Marken Heights Development Corp.
Mountain Park, LLC
Neuman Family, LLC
Oasis Estates, LLC
Odell Properties, LLC
Park City Investments, LLC
Powell Butte Investments, LLC
Quinn River Ranch, LLC
Riley Coyote, LLC
SDC Investments, LLC
Shelly Properties, LLC
Sisters Mobile Home Park TIC
Smith Brothers Pushrods, LLC
SoCo Investments, LLC
Stacy Point Investments, LLC
Stone Mountain, LLC
Summit CPA Group, LLP
Summit Accommodators, Inc.
Summit Accommodators Portland, LLC
Summit 1031 Exchange, LLC (Idaho)
Summit 1031 Exchange, LLC (Montana)
Summit 1031 Exchange, LLC (Nevada)
Summit 1031 Exchange, Inc. (Texas)

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Summit 1031 Exchange, LLC (Utah)
Summit 1031 Exchange, Inc. (Washington)
Summit 1031 Exchange, LLC (Wyoming)
Touchstone Properties I, LLC
Travis Ranch, LLC
Three Sisters Development, Inc.
Glacier Bridge, LLC
Carpathian Mtn. Development, LLC
Harz Mtn. Development, LLC
RSN Properties, LLC

Interests in the following real property (listed by State/Country):

Oregon:

Parcel 2, Partition Plat No. 2002-90, Deschutes County, OR
744 NW Broadway Street, Bend, OR 97701
1005 NW Galveston Ave., Bend, OR 97701
1567 SW Chandler Ave., Bend, OR 97702
68656 Highway 20, Sisters, OR 97759
4175 SW Canal Blvd, Redmond, OR 97756
4183 SW Canal Blvd, Redmond, OR 97756
62958 Layton Ave., Bend, OR 97701
265 NW Franklin Ave., Bend, OR 97701
5800 W 1st Ave., Culver, OR 97734
63475 Hamehook Rd., Bend, OR 97701
63465 Hamehook Rd., Bend, OR 97701

141 SW 15th St., Bend, OR 97702

1600 SW Simpson Ave., Bend, OR 97702

2049 SE Portola Dr., Grants Pass, OR 97526

3167 NW Quiet River Ln., Bend, OR 97701

1771 NW 35th St., Redmond, OR 97756

6101 SW Powell Butte Hwy., Powell Butte, OR 97753

Lots 1 through 21, Tract 1387 – WHISPERING MEADOWS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, except Lots 9, 16, 19 and 20.

63013 Lower Meadow Drive, Bend, OR 97701

63019 Lower Meadow Drive, Bend, OR 97701

North Brinson Business Park Phase I Lot: 28, Deschutes County, OR; Map/Tax lot # 17-12-21-ac-00200

20434 Ahha Ln., Bend, OR 97702

2403 SW 29th St., Redmond, OR 97756

1241 SW 33rd St., Redmond, OR 97756

Lot 5, Block 14 Valhalla Heights Phase 4, Deschutes County, OR; Lots 1-23 of the Marken Heights Subdivision

18775 Macalpine Loop, Bend, OR 97702

88605 Nautilus Ct., Florence, OR 97439

63565 Deschutes Market Rd., Bend, OR 97701

1771 NW 35th St., Redmond, OR 97756

Lot 32, North Rim on Awbrey Butte, Phase 2, Deschutes County, OR

Maplots 1615 800; 1615 800 AO2 & 800 AO3; 1615 800 AO4 AO5; 1615 1000; and 1615 1800 Deschutes County, OR

17483 Grebe Rd., Bend, OR 97707

Lots 15 and 16 in Block 10 of Wiestoria Addition to Bend, Deschutes County, OR

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1644 SE Riviera Dr., Bend, OR 97702
1724 NE Hollow Tree Ln., Bend, OR 97701
2808 SW Reindeer Ave., Redmond, OR 97756
61496 Ward Rd., Bend, OR 97702
86 NW Allen Rd., Bend, OR 97702
15775 Dawn Rd., La Pine, OR 97739
6101 SW Powell Butte Hwy., Powell Butte, OR 97753
6105 SW Powell Butte Hwy., Powell Butte, OR 97753
5 SW Roosevelt Ave., Bend, OR 97702
63210 Cole Rd., Bend, OR 97701
64650 Highway 97, Bend, OR 97701; Maplot 16-12-35-00-00700 Deschutes County, OR
Maplot 17-13-00-00-03200, and 17-13-00-00-03201 Deschutes County, OR
56245 Delta Dr., Blue River, OR 97413
700 SW Ramsey Ave., Grants Pass, OR 97527
61598 River Rd., Bend OR 97702
61653 Cedarwood Rd., Bend, OR 97702
61657 Cedarwood Rd., Bend, OR 97702
19907 Ashwood Dr., Bend, OR 97702
409 N Locust Lane, Sisters, OR 97759
429 N Locust Lane, Sisters, OR 97759
449 N Locust Lane, Sisters, OR 97759
18830 Macalpine Loop, Bend, OR 97702
1493 NW Remarkable Dr., Bend, OR 97701
7201 SE Weatherby Loop, Prineville, OR 97754
7297 SE Weatherby Loop, Prineville, OR 97754

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6084 NW Foster St., Prineville, OR 97754
6352 NW Foster St., Prineville, OR 97754
6102 NW Foster St., Prineville, OR 97754
6223 NW Foster St., Prineville, OR 97754
6279 NW Gray St., Prineville, OR 97754
6327 NW Elliot St., Prineville, OR 97754
11670 NW Irvine St., Prineville, OR 97754
11554 NW Houston Ave., Prineville, OR 97754
11574 NW Houston Ave., Prineville, OR 97754
11590 NW Houston Ave., Prineville, OR 97754
14060 NE Ochoco Highway, Prineville, OR 97754
4949 S.W. Highland Ave., Redmond, OR 97756
Lot 1, Block 3, La Pine Acres, Deschutes County, OR
Lots 29 through 38, Block 5, La Pine Acres, Deschutes County, OR
Lots 41 through 43, Block 5, La Pine Acres, Deschutes County, OR
Lots 5, 6 and 7, Block 6, La Pine Acres, Deschutes County, OR
Lots 27 and 28, Block 5, First Addition to Deschutes River Acres, Deschutes County, OR
Lots 31 and 32, Block 5, First Addition to Deschutes River Acres, Deschutes County, OR
Lots 34, 35 and 36, Block 5, First Addition to Deschutes River Acres, Deschutes County, OR
15595 Dorrance Meadow Rd., La Pine, OR 97739
51575 Dorrance Meadow Rd., La Pine, OR 97739
51581 Dorrance Meadow Rd., La Pine, OR 97739
51596 Dorrance Meadow Rd., La Pine, OR 97739
51861 Dorrance Meadow Rd., La Pine, OR 97739
15595 River Drive, La Pine, OR 97739

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51520 Reeve Court, La Pine, OR 97739

15522 Deer Ave., La Pine, OR 97739

Maplot 26-13-02BC TL 2900, 3000, 3200, 3300; Coos County, OR

Arizona:

5246 E. Lee St., Tucson, AZ 85712

5521 E. Water St., Tucson, AZ 85712

2508 S. Forgeus Ave., Tucson, AZ 85713

4720 N. Rio Vista Dr., Tucson, AZ 85749

8018 E. 8th St., Tucson, AZ 85710

3631 S. 7th Ave., Tucson, AZ 85713

447 35th St., Tucson, AZ 85713

512 E. Speedway Blvd., Tucson, AZ 85711

514 E. Speedway Blvd., Tucson, AZ 85711

339 W. 19th St., Tucson, AZ 85701

2844 E. 21st St., Tucson, AZ 85713

149 E. 25th St., Tucson, AZ 85713

3762 E. 5th St., Tucson, AZ 85711

10485 E. Observatory Dr., Vail, AZ 85750

1211 S. Rook Ave., Tucson, AZ 85711

1121 S. Tyndall Ave., Tucson, AZ 85719

1730 N. Campbell Ave., Tucson, AZ 85719

Lots 7, 23 and 24, Fullhouse Estates, according to Book 22 of Plats, page 26, records of Navajo County, AZ

Lot 98, Fawn Brook, according to Book 11 of Plats, page 19, records of Navajo County, AZ

4281 S. Khe Sahn Ln., Tucson, AZ 85735

1750 N. Stone Ave., Tucson, AZ 85705

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Colorado:

3405 Eastman Dr., Boulder, CO 80305

Idaho:

161 Sugarloaf Pl., Cascade, ID 83611

23 Bannock Circle, Lot 12 Block 28, Victor, ID 83455

56 Rammell Rd., Lot 20 Block 7, Victor, ID 83455

Montana:

179 Schrade Rd., Kalispell, MT 59901

7 Main St., Kalispell, MT 59901

11 Main St., Kalispell, MT 59901

140 1st Avenue East, Kalispell, MT 59901

3328 Columbia Falls Stage Rd., Columbia Falls, MT 59912

7085 Highway 2 E, Columbia Falls, MT 59912

7095 Highway 2 E, Columbia Falls, MT 59912

Lot F, COS 1343, Sec 32, T5S, R1W, Ennis, MT 59729; tax lot 27244212

Texas:

2502 Kinney Rd, Austin, TX 78704

Utah:

1450 Park Ave., Park City, UT 84060

1460 Park Ave., Park City, UT 84060

6804 S 1300 E, Salt Lake City, UT 84121

Mexico:

Unit 3, Lot 4, Corales St., Puerto Escondido, Mexico

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **ORDER ON TRUSTEE'S MOTION FOR PARTIAL SUMMARY JUDGMENT** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

DATED this ____ day of April, 2009.

TONKON TORP LLP

By /s/ David S. Aman

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LIST OF INTERESTED PARTIES

*In re: Summit Accommodators, Inc. dba Summit 1031 Exchange
Kevin D. Padrick, Chapter 11 Trustee v. Mark A. Neuman;
Brian Stevens; Lane D. Lyons; and Timothy Larkin
U.S. Bankruptcy Court Adv. Pro. No. 09-3086-rld*

ECF PARTICIPANTS:

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